United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

76-1579

To be argued by
HENRY PUTZEL, III

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-1579

UNITED STATES OF AMERICA,

Appellee,

-v.-

JOEL I. LEVINE,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX ON BEHALF OF THE DEFENDANT

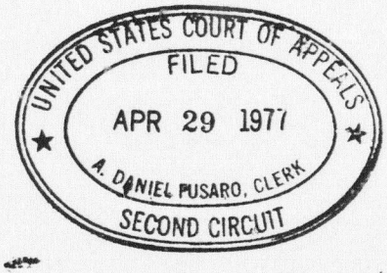

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TABLE OF CASES

QUESTION PRESENTED

Whether defense counsel's failure to prepare his case and to make pre-trial motions, his inept presentations to the jury and his haphazard cross-examination of witnesses deprived the defendant of the effective assistance of counsel.

PRELIMINARY STATEMENT

Joel I. Levine appeals from a judgment of conviction entered November 12, 1976 in the United States District Court for the Southern District of New York, following a six-day jury trial before the Honorable Charles E. Stewart, United States District Judge.

Indictment S-76 Cr. 452*, in seven counts, was filed May 4, 1976 and charged Levine, as known by several aliases, with mail fraud (Count One), use of a false name for purposes of committing mail fraud (Counts Two and Three), making false statements to a federally insured bank (Counts Four through Six) and bail jumping (Count Seven) in violation, respectively, of Title 18, United States Code, Sections 1341, 1342, 1014 and 3150**.

Counts One through Six of the Indictment charged in substance that the defendant used false names and credit information to obtain credit cards and open bank accounts. Count One charged him with mailing an application for a Carte Blanche credit card in furtherance of a fraudulent scheme. Counts Two and Three charged him with use of the false names "Michael Goodman" and "Michael Goldstein", in furtherance, respectively, of fraudulent schemes to obtain a charge account with Whitehouse & Hardy and a credit card from the Exxon Corporation. Counts Four, Five and Six charged Levine with fraudulently misrepresenting his identity and his employment background to the Bankers Trust Company and the Chemical Bank. Count Seven alleged that, after his arrest and arraignment on the underlying complaint, Levine wilfully failed to appear as required.

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*App. B. "App." refers to the Appellant's Appendix herein; "T." refers to the transcript of the trial; "GX." refers to Government Exhibits offered in evidence at the trial.

**Although Count Seven charges Levine in the language of the bail jumping statute, Title 18, United States Code, Section 3150, the indictment charges him with violation of Section 1014. No objection was made by trial counsel to the typographical error, nor did counsel raise a claim of variance.

Following a number of adjournments of trial and substitution of defense counsel, trial commenced before Judge Stewart and a jury on October 6, 1976.* The trial continued over a six-day period, at the conclusion of which the jury returned a verdict of not guilty as to Count One and guilty as to the remaining counts of the indictment.

On November 12, 1976, Judge Stewart sentenced the defendant to imprisonment for concurrent terms of four years on Counts Two, Three and Seven and two years on Counts Four, Five and Six. The defendant is currently serving his sentence.

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* On July 12, 1976, Levine's original lawyer, Robert Mitchell, Esq., withdrew as trial counsel and John P. Hill, Esq., appeared in Mitchell's stead. Mr. Hill, who was privately retained, represented the defendant throughout trial and through the date of sentence. Therefore, Mr. Hill was relieved as counsel and Henry Putzel, III was appointed to represent the defendant on appeal to this court.

Statement of Facts

The Government's case as to the fraud counts of the indictment consisted in the testimony of some 28 witnesses, including bank officers and employees, representatives of the various firms and businesses to whom the defendant allegedly submitted fraudulent credit applications, and witnesses to disprove the allegedly false statements contained in such applications, including superintendants and building managers, postal employees, and several former business associates of Levine. Through some of these witnesses the Government offered in evidence the allegedly fraudulent applications which were the subject of Counts One through Six of the Indictment and a number of known specimens of the defendant's handwriting. Finally, the Government called Joseph McNally, a handwriting expert, who opined that the various "questioned documents --the allegedly false applications--were written by Levine.

Count One

To support the charge in Count One that Levine used the mails to submit a fraudulent application for a Carte Blanche Credit Card, the Government called Arnold Peller, custodian of Carte Blanche records, who produced and explained the allegedly fraudulent application (GX. 13) (T. 212-222). Thereafter, various Government witnesses testified to facts which, if believed, tended to disprove statements made in the application: that Levine had not lived for four years at 3 West 83rd Street (T. 288-304); and that he had not been employed for six years at the International Law and Tax Haven Review (T. 166-208, 247-288, GX. 6). As with all such documents, the handwriting expert, McNally, testified that the document was written by Levine. The jury acquitted the defendant of the charge in Count One.

Count Two

With respect to the second count of the indictment--that Levine had used the false name of Michael Goldstein in applying for a Whitehouse & Hardy charge account--the Government called Julie Ruskiewicz, credit manager for the store, who produced a

charge application for one "Michael Goldstein" which was later identified by McNally as having been written by the defendant. (T. 377-381, GX. 17). Other witnesses connected Levine with the address given by "Michael Goldstein" (T. 318-326) at 234 East 14th St. and his employment at Cranes Unlimited (T. 309-318).

Count Three

Count Three of the Indictment charged the defendant with falsely using the name "Michael Goodman" in an application for an Exxon Corporation credit card. The Government called George Locker, an Exxon employee, who identified a completed application for "Michael Goodman" and the credit card which was issued in response (T. 305-308, GX. 19 and 19-A). It then sought to connect the card to Levine by calling Joseph Durso, the superintendent of 234 East 14th Street--the address given by the applicant--who identified Levine as "Goodman". (T. 318-326*). Other witnesses identified Levine as having rented an office at 1182 Broadway for "Cranes Unlimited", the purported employer of "Michael Goodman" (T. 309-318). Finally, McNally testified that the Goodman application contained printing identical to that identified as belonging to Levine.

Count Four

The indictment charged in Count Four that the defendant falsely misrepresented himself in a Bankers Trust Company loan application as "Peter Cole" and stated that he had been employed for five years with the International Law and Tax Haven Review. The Covernment called two Bankers Trust Company employees, Caroline Tomlinson and Janet Sweeney, who identified the defendant as the "Peter Cole" who filled out the

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* Durso, like a number of other crucial witnesses who identified Levine, testified that he had identified Levine from a photographic spread of seven pictures during pre-trial preparation with Government counsel. Far from objecting to the suggestiveness of any such procedure or otherwise contesting its admissibility, defense counsel elicited testimony to such identification during cross-examination of the witness, T. 325.

subject loan application (T. 34-83, 105-132*). The prosecution then offered a postal forwarding card directing that "Cole's" mail be sent to Levine at 3 West 83rd Street and called the building superintendent to testify that Levine had not lived at that address for four years. Finally, the Government pointed to the testimony relating to the International Law and Tax Haven Review (T. 166-208, 247-288) to argue that "Cole" had not been employed at that business for five years. As with other applications, McNally linked the questioned document to Levine.

Count Five

The proof with respect to Count Five turned on an allegedly fraudulent application for a privileged checking account at the Chemical Bank. The Government called an employee of the bank, who identified an application for "Michael Goldstein" of 234 East 14th Street, employed by Cranes Unlimited. (T. 373-376, GX. 20) In addition to the handwriting testimony of McNally, the Government relied upon the same proof with respect to Count Five as that relating to Count Two.

Count Six

As to Count Six, the Government contended that Levine had fraudulently misrepresented his employment history to the Chemical Bank by falsely stating, in a loan application, that he had been employed by the P & R Electric Corp. as a salesman for four years. With respect to such charge, the Government relied upon the testimony of Robert Koppelman, the principal of the company, who acknowledged that Levine had indeed worked for P & R on a commission basis for a period of time in 1974 (T. 166-206).

Count Seven

With reference to Count Seven, the bail jumping charge, the Government called Levine's former attorney and his secretary, who testified in substance that Levine had

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* Both Ms. Tomlinson and Ms. Sweeney stated, on cross-examination, that they had observed a photograph of Levine during pre-trial interviews. T. 63-4, 120.

been directed to report once every week to the United States Magistrate until such requirement was relaxed in September, 1975 to a requirement to sign in once every three weeks. (T. 355-367, 395-400) The Government also called a clerk from the Magistrate's office to testify that Levine had last signed in as required on October 20, 1975. (T. 338-342) Finally, the Government called one Louis Gorenc, who testified that he met the defendant in California in January, 1976 (T. 335-8).

The defendant rested without calling any witnesses.

ARGUMENT

DEFENSE COUNSEL'S FAILURE TO PREPARE HIS CASE AND TO MAKE ESSENTIAL PRE-TRIAL MOTIONS, HIS INEPT PRESENTATIONS TO THE JURY AND HIS HAPHAZARD CROSS-EXAMINATION OF WITNESSES DEPRIVED THE DEFENDANT OF THE EFFECTIVE ASSISTANCE OF COUNSEL

By any standard, the record of this six-day trial reflects that the defendant Levine was inadequately represented by his retained counsel. Indeed, counsel so completely failed to protect the essential rights of his client that the conviction must be reversed and the case remanded for a new trial.

Most of the pertinent facts are a matter of record.* On July 12, 1976, John C. Hill, Esq. appeared as counsel for Levine in substitution for Robert Mitchell, Esq. From that date until October 1, 1976, Hill made no pre-trial motions (except those addressed to Levine's bail status), nor did he seek formal discovery. See, Rules 7(f), 12, 14, and 16(a), F. R. Crim. Proc.** In particular, defense counsel made no motion to sever counts of the indictment or to sever the fraud counts from the charge of bail jumping, Rule 14, F. R. Crim. Proc. He sought no statements of the defendant; did not request the production of exculpatory evidence; did not seek a copy of the Government's handwriting analysis; failed to

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*The defendant submits that the record below is more than sufficient to demonstrate the inadequacy of his trial counsel. Should this Court find that the record must be supplemented by evidence of defense counsel's out-of-court preparation for trial, we request--as an alternative remedy--that the case be remanded for an evidentiary hearing on this point. See, United States v. DeCoster, 487 F.2d 1197 (D.C. Cir. 1973).

**The Assistant United States Attorney who prosecuted the case has advised appellate counsel that his records reflect that the government voluntarily sent to defense counsel copies of the allegedly false loan applications which were the basis for Counts One through Six. Government counsel also recalls one conference with Mr. Hill in late September, 1976 in which he orally described the evidence to be adduced at trial.

ask for production of other documentary evidence to be offered at trial; and, most important, made no effort to see the photographs which had been used to prepare Government witnesses for their in-court identifications of the defendant. Nor did defense counsel apparently make any effort to interview Government witnesses or to subpoena defense witnesses or, in a case in which handwriting evidence was crucial, to engage the services of an independent handwriting expert. Finally, counsel made no motion to suppress the in-court identifications made by witnesses who had been shown photographs. Indeed, Mr. Hill represented to the Court that "a handwriting expert in this case as far as the defendant is concerned, from my point of view is not needed...It would just be a waste of time and money, really." (T. 8-9, Oct. 1, 1976). Moreover, counsel stated to the Court that "there was just no basis for any kind of motion, your Honor." (T. 9, Oct. 1, 1976). In short, counsel commenced trial having done little more than receive an oral synopsis of the Government's case at a time when adequate preparation was already virtually impossible.

Mr. Hill's failure to prepare his case produced inevitable results at trial. His opening statement, occupying less than a page of transcript (T. 32-3), displayed no discernible strategy, nor did it contain any of the basic points traditionally raised by defense counsel during opening statements.* His cross-examination of Government witnesses was rambling and unfocused and tended to

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*In raising the claim that the defendant was denied the effective assistance of counsel, appellate counsel is acutely aware of the superior perspective afforded by hindsight. It is clearly far easier to criticize performance by counsel than it is to represent a client competently. Moreover, many omissions at trial--if deliberate--have a sound basis which find no explanation from the printed record of a trial. Nevertheless, even allowing for the above factors, it is clear that trial counsel's representation of the defendant in this case did not meet minimal standards of competence.

supplement the Government's case, rather than to develop evidence favorable to Levine. In particular, Hill's cross-examination of witnesses making in-court identifications of the defendant invariably tended strengthen such testimony. Indeed, rather than objecting to the admissibility of prior photographic identifications, counsel elicited such evidence himself.* See, e.g., T. 61-71, 116-132, 324-6. And counsel's brief cross-examination of McNally, the crucial handwriting expert, demonstrated a total unfamiliarity with the field and served only to buttress the Government's case. (T. 430-434).

With respect to the evidence of bail jumping, defense counsel failed to interpose any objection to testimony by Levine's former attorney concerning privileged conversations between himself and his former client (T. 361).

During summation of Government counsel, Mr. Hill failed to object in any manner to a flat misstatement of fact by Government counsel.** And during his own

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*Had counsel moved properly for a pre-trial taint hearing, Simmons v. United States, 390 U.S. 377 (1968), he might well have successfully challenged the ability of several Government witnesses to identify Levine independent of the photographs which they had been shown. In particular, Caroline Tomlinson, the Bankers Trust Officer, was permitted to identify Levine in court after having been shown a spread of only four photographs by Government counsel. At the very least, counsel could have avoided buttressing the Government's case by eliciting such testimony for the first time in the jury's presence. Only recently, in an analogous case, a New York Appellat court concluded that the defendant had been deprived of the effective assistance of counsel who failed to make a pre-trial motion to suppress arguably tainted evidence. People v. Sims, 55 A.D.2nd 629 (Mem., App. Div., 2nd Dept., 1976).

**The prosecutor told the jury that Mrs. Ruszkowicz, the credit manager at Whitehouse & Hardy, "told you that Mr. Levine was Mr. Goldstein", thus stating that an eyewitness had connected the defendant with the "Michael Goldstein" who opened the charge account. (T. 477). In fact, Mrs. Ruszkowicz testified that she had never seen the defendant before (T. 381). Although the misstatement was doubtless inadvertant, defense counsel's failure to correct the obvious mistake might well have permitted the jury to rely on wholly fallacious--and obviously crucial--evidence.

brief summation, counsel devastatingly referred to his own client as "Mr. Goldstein", one of the false names which Levine was accused of having used (T. 489). In short, counsel failed throughout the entire trial to protect the rights of his client and to articulate any reasonable defense or defense strategy.*

The claim of ineffective assistance of counsel is presently measured in this Circuit by United States v. Wight, 176 F. 2d 376, 379 (2d Cir. 1949), cert. denied, 338 U.S. 950 (1950): "A lack of effective assistance of counsel must be of such a kind as to shock the conscience of the Court and make the proceedings a farce and mockery of justice." See Rickenbacker v. Warden, _____F. 2d_____, (2d Cir., 1976) (Dkt. No. 76-2036, Decided December 22, 1976, slip op. at 1063), and cases cited at 1070 therein. It is respectfully submitted that the conduct of counsel in the instant case made of Levine's trial the farce andmockery anticipated in Wight. Counsel's repeated errors--both of omission and commission--afforded no protection whatsoever to the defendant. To the contrary, a fair reading of the record below demonstrates that defense counsel did far more to eliminate reasonable doubt of Levine's guilt than to create it. And his inability to advance sound legal arguments to exclude important prosecution evidence badly prejudiced the rights of the defendant and deprived him of the assistance of counsel guaranteed under the Sixth Amendment. See, McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970).

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*In colloquy with the Court, Levine stated that he had demanded that Hill subpoena certain witnesses to testify during the defense case, (T. 345-354). When pressed by the Court, Levine's responses as to the identity of such witnesses was not precise. Thus, on the present record, appellate counsel is simply unable to evaluate whether counsel's decision to rest without calling witnesses was tactically defensible. It is clear, however, that his failure to retain a defense handwriting expert in itself virtually assured a conviction.

It is, of course, always a speculative proposition to measure the impact of counsel's performance upon the outcome of a trial. Conceivably, no counsel, no matter how skilled, could successfully have represented the defendant in this case. It is submitted, however, that this proposition simply cannot be established on the basis of the present record. Had counsel successfully precluded Levine's former attorney from disclosing privileged conversations with his client or challenged the ability of the bank officers to identify Levine or attacked the findings of the handwriting expert, the outcome of the trial might well have been different. In any event, the incompetency of defense counsel was clearly not "harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967). United States v. Beasley, 491 F. 2d 687, 696 (6th Cir., 1974); compare with United States v. Katz, 425 F.2d 928, 930 (2d Cir. 1970). In short, the record demonstrates both the incompetence of counsel and the prejudicial effect of such incompetence. See, McQueen v. Swenson, 498 F.2d 207, 218 (8th Cir. 1974) and United States v. Decoster, No. 72-1283 (D.C. Cir. Oct. 19, 1976).

Even if this Court concludes that the "farce and mockery" test is not satisfied by the facts presented in the instant case, there is ample justification for accepting the lower standard of proof applied in other Circuits to conclude that the defendant was deprived of the effective assistance of Counsel. Indeed only recently a panel of this Court questioned the continuing validity of the currently applied standard, while one member of the Court explicitly rejected the "farce and mockery" test. Rickenbacker v. Warden, supra, slip op. at 1071 and 1074 (Oakes, J. dissenting). As pointed out by Judge Oakes, a majority of other Circuits do not apply the "farce and mockery" test:

United States v. Elkins, 528 F.2d 236, 238 (9th Cir. 1975); United States ex rel. Williams v. Twomey, 510 F.2d 634 (7th Cir.), cert. denied, 423 U.S. 876 (1975); Johnson v. United States, 506 F.2d 640, 646 (8th Cir. 1974), cert. denied, 420 U.S. 978 (1975); Beasley v. United States, 491 F.2d 687, 693 (6th Cir. 1974); Moore v. United States, 432 F.2d 730, 736-37 (3d Cir. 1970) (en banc); Coles v. Peyton, 389 F.2d 224 (4th Cir.), cert. denied, 393 U.S. 849 (1968); Bruce v. United States, 379 F.2d 113 (D.C. Cir. 1967; MacKenna v. Ellis, 280 F.2d 592 (5th Cir.), modified, 289 F.2d 928 (1960) (per curiam, cert. denied, 368 U.S. 877 (1961).

See also, Rickenbacker v. Warden, supra, and cases cited at 1071. Indeed, it is highly ironic that the circuit which has, more than any other, taken a stance of leadership to develop a trial advocacy of higher quality, should continue to use an appellate test which tolerates such low standards. See, Rickenbacker v. Warden, supra, at 1074 (Oakes, J., dissenting).

Virtually any formulation of the rule adopted in other Circuits requires reversal of the instant conviction when applied to the facts at bar. Counsel's performance clearly did not rise to the level of "reasonably competent assistance", United States v. DeCoster, supra, 487 F.2d at 1202, nor was it "the exercise of the customary skill and knowledge which normally prevails at the time and place". Moore v. United States, 432 F.2d 730, 736 (3rd Cir. 1970) (en banc). In short, the performance of Levine's attorney clearly did not meet even "a minimum professional standard." United States ex rel. Williams v. Twomey, 510 F.2d 634, 640 (7th Cir.) cert denied sub nom. Sielaff, Corrections Director v. Williams, 423 U.S. 876 (1975).

Of all of the standards referred to above, the "reasonably competent assistance" standard adopted in the District of Columbia appears to be the simplest and most appropriate formulation of the rule. It is patently clear that Levine was not given reasonably competent assistance of counsel. To the contrary, counsel's inadequate performance prevented the defendant from receiving a fair trial, despite the even-handed conduct of the case by the Court and the generally unexceptionable conduct of Government counsel. The facts presented in this case, however, demonstrate once again that the adversary system cannot function without zealous advocacy. Neither the Court nor Government counsel had any apparent obligation to suggest motions which counsel might make or to cross-examine defense witnesses. Such burden rested alone on the shoulders of defense counsel. His failure to carry that burden now mandates a reversal of the conviction below and remand of the case for a new trial.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of conviction should be reversed and the case remanded for a new trial. In the alternative, should the facts of record be deemed insufficient to afford such relief, the case should be remanded to the District Court for an evidentiary hearing on the factual issues raised herein.

Dated: New York, New York

April 29, 1977

Respectfully submitted,

Henry Putzel, III
Counsel for the defendant

A

PETTY OFFENSE Po
OTHER MINOR OFFENSE Mo
OTHER MISDEMEANOR Mis
FELONY Fel X

JUDGE/MAGISTRATE Assigned: 0208 | 1 | 0858

U.S. vs LEVINE, JOEL I., a/k/a Peter Cole, a/k/a Michael Goldstein

Case Filed Mo Day: 05 04 — 76 0452 01

No. of Deft.: 01

OFFENSES CHARGED

U.S. TITLE/SECTION		ORIGINAL COUNTS
18:1341	Mail fraud.	1
18:1342	Use of false name to commit fraud.	2&3
18:1014	False statements on loan appl.	4-7

U.S. TITLE/SECTION		SUPERSEDING COUNTS
18:1341	Mail fraud	1
18:1342	Use of false name to commit mail fraud	2&3
18:1014	False statements on loan appl.	4-6
18:3150	Bail jumping.	7

11/19

II. KEY DATES & INTERVALS

ARREST: U.S. Custody began 6-17-75

INDICTMENT X: Indictment 5-4-76; 5-4-76; 5-17-76

ARRAIGNMENT: 5-17-76; 5-17-76

TRIAL: 10-7-76; 10-14-76

SENTENCE: 10-14-76; 11-17-76

MAGISTRATE

ATTORNEYS

U.S. Attorney or Asst.: Howard W. Goldstein, 791-1917

Defense: John P. Hill

PROCEEDINGS

DATE	PROCEEDINGS
5-4-76	Filed indictment.
	Superseding 75 Cr 1151 and referred to Stewart, J.
	Filed appearance bond in the amt. of $5,000 .(surety attached)
5-7-76	Filed appearance bond in the amt. of $25,000 PRB co-sgined by
5-7-76	Monica and Walter Brandford.
	Filed affdt. of Moncia Brandford assigning interest as security.
5-7-76	Atty. Robert Mitchell, Esq. present. Deft. pleads NOT GUILTY.
5-12-76	Motions Returnable May 27,1976 . Bail cont'd.
5-13-76	Filed govts. notice of readiness for trial.
5-21-76	Filed remand dtd. 5/7/76.
06-04-76	Pre-Trial Conference held. Trial set for 8-2-76 at 10:30 AM -- Stewart, J.

BEST COPY AVAILABLE

FORM AO-256

A

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V. ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	IV. PROCEEDINGS (continued) PAGE TWO	V. EXCLUDABLE DELAY			
	DOCUMENT NO.	(a)	End Date (b)	Ltr. Code (c)	Total Days (d)
7-9-76	Bail is revoked. B/W is ordered. Stewart, J.				
7-9-76	benchwarrant issed.				
07-12-76	Bail set in the sum of $50,000. cash or surety. Deft. remanded in lieu of bail. Robert Mitchel relieved as Atty. New Atty.: John P. Hill. -- Stewart, J. remand issued.				
7-29-76	Deft. (atty. John Hill, present). Bail fixed at $25,000 [illegible] secured by $2,500 cash, or surety signed by defts. girlfriend [illegible] also a $25,000 [illegible] co-signed by parents or relative [illegible] to be posted by noon, Friday, July 30, 1976. Conner, J.				
7-30-76	Bail is reduced to $25,000 [illegible] signed by [illegible] Branford and deft. (which was previously posted) to post a $25,000 [illegible] signed by defts. parents (court directs that defts. father be permitted to sign bond before Mag.) and a $5,000 cash or surety bond and deft. must live w/parents and deft. must sign in with magistrate once per week. Walter Branford ordered exonerated from all bond obligations. Conner, J.				
9-1-76	Deft's motion for reduction of bail - the court rules that Judge Conner's determination of 7-30-76 should remain in effect with the exception that $5,000 cash or surety be reduced to $2,500 cash or surety. Stewart, J.				
09-27-76	Filed Superseding Indictment & referred to Stewart, J....... Pollack, J.				
10-01-76	Pre-trial Conference held before Judge Stewart. Deft. and Counsel present. Trial scheduled for 10-06-76 at 10: A.M. All Deft's Motions denied. See Official Court Reporters Minutes. STEWART J.				
10-06-76	Mr Walter Branford is exonerated from any and all bond obligations imposed by Judge Conner's Order of 07-30-76. So Ordered. STEWART J				
10-06-76	Deft. and Attorneys present. Govt's motion to nolle original charges granted. No obj. by deft. Case to proceed on S.452. Stewart J.				
10-13-76	Filed on envelope ordered sealed containing Exh. 1. So Ordered STEWART.J.				
10-6-76 -	Atty. John C. Hill, Esq. present. Deft. pleads N/G GUILTY to charges in Indictment (S) 76 Cr. 452 . Jury empaneled and trial begun.				
10-7-76	Trial cont'd.				
10-8-76	Trial Cont'd				
10-12-76	" "				
10-13-76	" "				
10-14-76	" " and concluded . Deft. found GUILTY on cts. 2 thru 7 inclusive and NOT GUILTY on Ct. ONE (1). PSI Ordered. No bail. Sentence adjourned to 11/10/76 at 9:30 AM. Deft. remanded .				

LETTER CODES

P Superseding indictment and/or new charges.

R Defendant awaiting trial of Co-defendant when no severance has been granted.

T Continuances granted per 3161(h)(8) i.e. ends of justice or complexity of case outweighs defendants interests.

U Time between guilty plea and plea withdrawal.

W Grand Jury indictment extended per 3161(b)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

76 Cr. 432 (S.E.S.) U.S.A. vs. Joel Levine,

DATE	PROCEEDINGS
11-[illegible]-76	Filed Govt's Voir Dire and Request to Charge.
11-[illegible]-76	Filed Govt's Request to Charge.
11-[illegible]-76	Filed order that Walter Bradford is exonerated from all previous obligations on the personal recognizance bond and that bail bond put up by the Stuyvesant Insurance Co....So Ordered...STEWART,J.
11-12-76	Filed Judgment & Commitment (atty Joel I. Levine) The defn. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FOUR (4) YEARS on each counts of 2 and 3, TWO (2) YEARS on each of counts 4,5,and 6 and FOUR (4) YEARS on count 7, sentence imposed on each of counts 2,3,4,5, 6 and 7 are to run concurrently with each other. Defn. was advised of his rights pursuant to Rule 32 (a) (2) of the Federal Rules of Criminal Proceedure.....STEWART.J. Issued all copies.
11-12-76	Filed Transcript of record of proceedings dated 10-1-76
11-19-76	Filed notice of appeal from the judgment of conviction entered on the 12 day of Nov. 1976. Mailed notice to defts. atty John C. Hill 377 Broadway, N.Y. N.Y. and U.S.Atty.

D. C. 109 Criminal Continuation Sheet

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [illegible] Deputy Clerk

m-1903

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CRIM. 0452

B

UNITED STATES OF AMERICA,

-v-

JOEL I. LEVINE, a/k/a "Peter Cole," a/k/a "Michael Goldstein," a/k/a "Michael Goodman,"

Defendant.

INDICTMENT

76 Cr.

COUNTS ONE THROUGH THREE

INTRODUCTION

The Grand Jury charges:

1. From on or about November 18, 1974 up to and including March 25, 1976, in the Southern District of New York, JOEL I. LEVINE, the defendant, unlawfully, wilfully and knowingly did devise a scheme and artifice to defraud certain banks, commercial credit companies and retail stores (hereinafter "the parties to be defrauded") and to obtain money and property from the parties to be defrauded by means of false and fraudulent pretenses, representations and promises.

2. It was a part of said scheme and artifice to defraud that the defendant JOEL I. Levine would and did submit and cause to be submitted applications for credit cards, loans and charge accounts to the parties to be defrauded, using on the applications false and fraudulent information, to wit, fictitious names, addresses, employers and income figures.

3. It was further a part of said scheme and artifice to defraud that the defendant JOEL I. LEVINE would receive credit cards, loans and charge accounts from the parties to be defrauded and would obtain money and purchase goods on credit using said credit cards, loans and charge accounts and would not pay for the money and goods so obtained.

COUNT ONE

The Grand Jury further charges:

1. The allegations set forth in paragraphs 1 through 3 of the Introduction are incorporated by reference as though alleged herein.

2. On or about the 3rd day of March, 1975, in the Southern District of New York, JOEL I. LEVINE, the defendant, for the purpose of executing said scheme and artifice to defraud and for the purpose of attempting to do so, unlawfully, wilfully and knowingly did place and did cause to be placed in a post office and authorized depository for mail certain matter to be sent and delivered by the United States Postal Service, and did cause to be delivered by mail according to the directions thereon said matter to wit, a Carte Blanche credit card application addressed to Carte Blanche, 3460 Wilshire Boulevard, Los Angeles, California.

(Title 18 United States Code, Section 1341).

COUNT TWO

The Grand Jury further charges:

1. The allegations set forth in paragraphs 1 through 3 of the Introduction are incorporated by reference as though alleged herein.

2. On or about the 21st day of May, 1975, in the Southern District of New York, JOEL I. LEVINE, the defendant, for the purpose of executing said scheme and artifice to defraud, by means of the Postal Service, and for the purpose of attempting to do so, unlawfully, wilfully, and knowingly did use and assume a fictitious and false name and address other than his own proper name and address, to wit, Michael Goldstein, 234 E. 14th St., New York, New York and did cause to be delivered by mail according to the directions thereon, an application for a charge account addressed to Whitehouse & Hardy, 9 E. 57th Street, New York, New York 10022.

(Title 18, United States Code, Section 1342).

COUNT THREE

The Grand Jury further charges:

1. The allegations set forth in the Introduction are incorporated by reference as though alleged herein.

2. On or about the 18th day of May, 1975, in the Southern District of New York, JOEL I. LEVINE, the defendant, for the purpose of executing said scheme and artifice to defraud by means of the Postal Service, and for the purpose of attempting to do so, unlawfully, wilfully and knowingly did use and assume a fictitious and false name and address other than his own proper name and address, to wit, Michael Goodman, 234 E. 14th St. New York, New York, and did cause to be delivered by mail according to the directions thereon, an application for an Exxon credit card addressed to Exxon, P.O. Box 400, Bala-Cynwyd, Pa. 19004.

(Title 18, United States Code, Section 1342).

COUNT FOUR

The Grand Jury further charges:

On or about the 28th day of May, 1975, in the Southern District of New York, JOEL I. LEVINE, the defendant, unlawfully, wilfully and knowingly did make a false statement in an application for a regular checking account and line of credit, to wit, that his name was Peter Cole, that he was employed by the International Law & Tax Haven Review, 3 W. 83 St. New York City, and that he had been so employed for five years, for the purpose of influencing the action of The Bankers Trust Co., 23rd Street and Third Avenue, New York, New York, a bank the deposits of which were then insured by The Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 1014).

COUNT FIVE

The Grand Jury further charges:

On or about the 29th day of May, 1975, in the Southern District of New York, JOEL I. LEVINE, the defendant, unlawfully, wilfully and knowingly did make a false statement in an application for a checking account credit line and Master Charge credit line, to wit, that his name was Michael Goldstein, that he was employed by Cranes Unlimited, 1182 Bway, New York City and that he had been so employed for six years, for the purpose of influencing the action of the Chemical Bank, 1170 Broadway, New York, New York, a bank the deposits of which were then insured by The Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 1014).

n-1903

COUNT SIX

The Grand Jury further charges:

On or about the 8th day of November, 1974, in the Southern District of New York, JOEL I. LEVINE, the defendant, unlawfully, wilfully and knowingly did make a false statement in an application for an installment loan, to wit, that he had been employed by P. & R. Electric Corp., 58-37 Francis Lewis Blvd., Hollis, 11423, N. Y. for a period of two years, for the purpose of influencing the action of the Chemical Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 1014.)

COUNT SEVEN

The Grand Jury further charges:

From on or about the 20th day of October, 1975, up to and including the 25th day of March 1976, the defendant, having been released pursuant to Chapter 207 of Title 18, United States Code, in connection with a felony charge, to wit, violation of Title 18, United States Code, Section 1014, as charged in a complaint sworn to June 27, 1975 before the United States Magistrate for the Southern District of New York, unlawfully, wilfully and knowingly did fail to appear before the United States Magistrate for the Southern District of New York as required.

(Title 18, United States Code, Section 1014.)

Kathrin Cregan
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

- FRANK HALLANA - Posted By Noon Friday July 30, 1976
CONNER J.

7/30/76 bail reduced to 25,000 PRB signed by Flonia Branford and defendant (previously posted) + 25,000 PRB signed by defendant's parents (Court directs that defendant's father be permitted to sign bond before Magistrate) + 5,000 cash or surety bond + defendant must live with parents + defendant must sign in with magistrate once per week - Walter Branford ordered exonerated from all bond obligations - Conner, J.

Sept. 1, 1976 - Defts motion for reduction of bail -. The Court rules that Judge Conner's determination of 7/30/76 should remain in effect with the exception that $5,000 cash or surety be reduced to $2,500 cash or surety.

OCT 1 1976 – Pre-trial conference held. Counsels & Deft. present. Trial scheduled for Oct. 6, 1976 at 10:00 A.M. All Deft's motions denied. See Official Ct. Reporters Minutes.

Stewart, J.

Stewart, J.

Oct. 6, 1976

Mr. Walter Branford is exonerated from any and all bond obligations imposed by Judge Connor's order of July 30, 1976.

So ordered

Charles R. Stewart
USDJ

Govt's motion to make this indictment and proceed on 76 Cr. 45 (S) – no objection by Deft. motion Granted

Stewart, J.

76 CRIM. 0462

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JOEL I. LEVINE,
a/k/a "Peter Cole,"
a/k/a "Michael Goldstein,"
a/k/a "Michael Goodman",

Defendant.

INDICTMENT

76 Cr.

(18 U.S.C. §§ 1014, 1341, 1342 and 3150.)

ROBERT B. FISKE, JR.

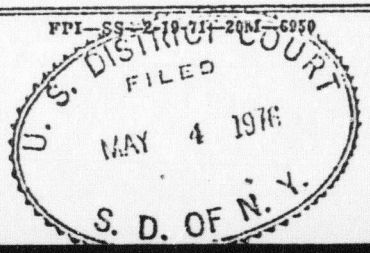
United States Attorney.

A TRUE BILL

Catherine Gregan

Foreman.

FPI—SS—2-19-71—20M—6950



JUDGE STEWART

May 4, 1976 Selection of Jurors (Agreed)

Howard Goldstein, Jury

May 12, 1976 - Atty. ROBERT MITCHELL, ESQ. present. Deft. pleads Not Guilty.
May 27, 1976 for motions. Bail as heretofore set. 75 Cr. 775,
to now cover this indictment. STEWART, J.

June 4, 1976 - Pre-trial conference held. Trial set for
Aug. 2nd, 1976 at 10 30 AM.

Stewart, J.

JUL 9 - 1976

Bail revoked. Bail ordered

Stewart, J.

July 12, 1976 -

Bail set in sum of $50,000
cash. Deft. remanded in lieu of
bail. John P. Hill is now defts. atty. Robert
Mitchell is relieved as counsel.
remand issued.

Stewart, J.

July 29, 1976 - DEFT. (Atty John Hill present) BAIL
FIXED ($5,000.00) & R.B. SECURED BY $2,500 CASH,